

## REMARKS/ARGUMENTS

Claims 20 and 22 are amended. Claims 33-35 are newly added. Support for these amendments can be found at originally filed claims 20-23, page 3, lines 17-20, page 5, line 16 to page 6, line 16, page 14, last line to page 15, line 23 of the specification, etc. No new matter is entered. Entry of the present amendments is respectfully requested. Upon entry of the present amendments, claims 20, 22-27, 30-31, and 33-35 are pending. Reconsideration of the present application based on the above amendments and the following remarks is respectfully requested.

Claims 20-24 and 26-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mizukami et al. (EP 0882983 A2) in view of Bates, R. "Amine buffers for pH control" Annals NY Acad. Sci. (1961) 92:341-356. In addition, claim 25 is objected to as depending from a rejected claim (i.e., claim 20); claims 30-31 are allowed.

According to the Examiner, Mizukami discloses a reagent comprising polymethine dye and a quaternary ammonium surfactant at a pH ranging from 4.5 to 11. The reagent is used to stain leukocytes. Bates teaches that methyl amine (aminomethane)/HCl buffer system can maintain the pH of an aqueous solution at about 6.1. The Examiner thus concludes that a person of ordinary skill in the art would apply methyl amine/HCl as a buffer in Mizuami's reagent and therefore arrive at the invention of claims 20-24 and 26-27.

Applicants have now amended claim 20 by removing aminomethane from the Markush group of the substance capable of reducing nitrite ions. Hence, due to the present amendments, the rejection of claims 20-24 and 26-27 become moot. Likewise, none of the new claims 33-35 recite aminomethane. Hence, the rejection of previously presented claims 20-24 and 26-27 is not applicable to any of new claims 33-35.

Mizukami and Bates, taken together, do not teach any of mercaptoacetic acid, 3-mercaptopropionic acid, sulfamic acid, sulfanilic acid, sulfurous acid, glutathione, cysteine and salts thereof; sulfanilamide; mercaptoethanol; thiophenol; and urea recited in claims 20-24, 26-27 and new claims 33-35.

Moreover, as explained in detail in the specification, the presently claimed reagent can rapidly and effectively stain bacteria in a sample, even if the nitrite ions are present therein (see, e.g., page 20, line 5 to page 21, line 1). Neither Mizukami nor Bates disclose or suggest such an "unexpected result." See MPEP 7167.02(c) ( EVIDENCE OF UNEXPECTED AND EXPECTED PROPERTIES MUST BE WEIGHED.) This further indicates that claims 20-24, 26-27, and 33-35 are not obvious over Mizukami in view of Bates under 35 U.S.C. 103(a).

Therefore, Applicants respectfully request that the Examiner withdraw the rejections of claims 20-24, 26-27, and 33-35 and the objection to claim 25, which depends from claim 20.

Based on the foregoing, Applicants believe that the present application is placed in condition of allowance. Early and favorable consideration is respectfully requested.

It is believed that no fees or charges are required at this time in connection with the present application; however, if any fees or charges are required at this time, they may be charged to our Patent and Trademark Office Deposit Account No. 03-2412.

Respectfully submitted,

COHEN, PONTANI, LIEBERMAN & PAVANE

By *Kent H. Cheng*

Kent H. Cheng  
Reg. No. 33,849  
551 Fifth Avenue, Suite 1210  
New York, New York 10176  
(212) 687-2770